

Federal Deposit Insurance Corporation

§ 381.3

company pursuant to paragraph (f)(1) of this section.

(3) *Multi-tiered holding company*. In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company only.

(4) *Asset threshold for bank holding companies and foreign banking organizations*. The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (f)(1)(ii) or (iii) of this section.

(5) *Exclusion*. A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

(g) *Critical operations* means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which, in the view of the covered company or as jointly directed by the Board and the Corporation, would pose a threat to the financial stability of the United States.

(h) *Depository institution* has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

(i) *Foreign banking organization* means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

(j) *Foreign-based company* means any covered company that is not incorporated or organized under the laws of the United States.

(k) *Functionally regulated subsidiary* has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

(l) *Material entity* means a subsidiary or foreign office of the covered company that is significant to the activi-

ties of a critical operation or core business line (as defined in this part).

(m) *Material financial distress* with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

(n) *Nonbank financial company supervised by the Board* means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(o) *Rapid and orderly resolution* means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

(p) *Subsidiary* means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

(q) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 381.3 Resolution plan required.

(a) *Initial and annual resolution plans required*. (1) Each covered company shall submit its initial resolution plan to the Board and the Corporation on or

before the date set forth below (“Initial Submission Date”):

(i) July 1, 2012, with respect to any covered company that, as of the effective date of this part, had \$250 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets);

(ii) July 1, 2013, with respect to any covered company that is not described in paragraph (a)(1)(i) of this section, and that, as of the effective date of this part had \$100 billion or more in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(iii) December 31, 2013, with respect to any other covered company that is a covered company as of the effective date of this part but that is not described in paragraph (a)(1)(i) or (ii) of this section.

(2) A company that becomes a covered company after the effective date of this part shall submit its initial resolution plan no later than the next July 1 following the date the company becomes a covered company, provided such date occurs no earlier than 270 days after the date on which the company became a covered company.

(3) After filing its initial resolution plan pursuant to paragraph (a)(1) or (2) of this section, each covered company shall annually submit a resolution plan to the Board and the Corporation on or before each anniversary date of its Initial Submission Date.

(4) Notwithstanding anything to the contrary in this paragraph (a), the Board and Corporation may jointly determine that a covered company shall file its initial or annual resolution plan by a date other than as provided in this paragraph (a). The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (a)(4) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

(b) *Authority to require interim updates and notice of material events.*—(1) *In general.* The Board and the Corporation may jointly require that a covered company file an update to a resolution

plan submitted under paragraph (a) of this section, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall make a request pursuant to this paragraph (b)(1) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(2) *Notice of material events.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the covered company. Such notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The covered company shall address any event, occurrence or change with respect to which it has provided notice pursuant to this paragraph (b)(2) in the following resolution plan submitted by the covered company.

(3) *Exception.* A covered company shall not be required to file a notice under paragraph (b)(2) of this section if the date on which the covered company would be required to submit the notice under paragraph (b)(2) would be within 90 days prior to the date on which the covered company is required to file an annual resolution plan under paragraph (a) of this section.

(c) *Authority to require more frequent submissions or extend time period.* The Board and Corporation may jointly:

(1) Require that a covered company submit a resolution plan more frequently than required pursuant to paragraph (a) of this section; and

(2) Extend the time period that a covered company has to submit a resolution plan or a notice following material events under paragraphs (a) and (b) of this section.

(d) *Access to information.* In order to allow evaluation of the resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and

the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. The Board and the Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(e) *Board of directors approval of resolution plan.* Prior to submission of a resolution plan under paragraph (a) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegate acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(f) *Resolution plans provided to the Council.*—The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

§ 381.4 Informational content of a resolution plan.

(a) *In general.*(1) *Domestic covered companies.* Except as otherwise provided in paragraph (a)(3) of this section, the resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.* Except as otherwise provided in paragraph (a)(3) of the section, the resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (i) of this section with respect to the subsidiaries, branches and agencies, and critical operations and core business lines, as ap-

plicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company and any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(3) *Tailored resolution plan.* (i) *Eligible covered company.* Paragraph (a)(3)(ii) of this section applies to any covered company that as of December 31 of the calendar year prior to the date its resolution plan is required to be submitted under this part—

(A) Has less than \$100 billion in total nonbank assets (or, in the case of a covered company that is a foreign-based company, in total U.S. nonbank assets); and

(B) The total insured depository institution assets of which comprise 85 percent or more of the covered company's total consolidated assets (or, in the case of a covered company that is a foreign-based company, the assets of the U.S. insured depository institution operations, branches, and agencies of which comprise 85 percent or more of such covered company's U.S. total consolidated assets).

(ii) *Tailored resolution plan elements.* A covered company described in paragraph (a)(3)(i) of this section may file a resolution plan that is limited to the following items—

(A) An executive summary, as specified in paragraph (b) of this section;

(B) The information specified in paragraphs (c) through (f) and paragraph (h) of this section, but only with respect to the covered company and its